Filed 9/3/02 Chavez v. Coconut Grove CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

GEORGE CHAVEZ, Plaintiff and Respondent, v. COCONUT GROVE, LLC et al., Defendants and Appellants.	B153962 (Super. Ct. No. VC030059)

APPEAL from a judgment of the Superior Court of Los Angeles County. Chris R. Conway, Judge. Affirmed.

Michael H. Lewis for Defendants and Appellants.

F. Robert Nakahiro for Plaintiff and Respondent.

The trial court entered a default judgment against defendants Coconut Grove, LLC and Mark Arioto, and awarded plaintiff George Chavez compensatory, general and punitive damages. Defendants ask this court to reverse the judgment on the ground they did not have sufficient notice of the amount of general and punitive damages Chavez

sought. The record on appeal is not adequate for this court to evaluate defendants' claim. Therefore, we must presume the trial court properly entered the judgment and affirm.

FACTS AND PROCEEDINGS BELOW

According to George Chavez, he loaned Coconut Grove, LLC and Mark Arioto $50,000 and they did not pay him back. Chavez sued Coconut Grove, Arioto (collectively, defendants) and two other individuals who are not parties to this appeal.

On June 6, 2000, Chavez filed his third amended complaint, which alleged 12 causes of action against defendants, including breach of contract, personal guaranty, fraud and deceit, intentional misrepresentation and breach of fiduciary duty. Chavez sought $50,000 in compensatory damages, interest on this amount, attorney fees and costs, general and special damages, and exemplary and punitive damages.

On or about February 5, 2001, defendants filed their answers to the third amended complaint. On or about May 23, 2001, the trial court granted Chavez's motion for terminating sanctions, and ordered defendants' answers "stricken." Apparently, defendants had failed to comply with court orders requiring them to respond to discovery. Defendants' counsel appeared at the hearing on the motion for terminating sanctions.

On July 3, 2001, Chavez filed and served defendants by mail with two separate statements of damages, one directed to each defendant. Chavez sought from each defendant (1) $50,000 in compensatory damages for breach of contract, (2) $65,387 in interest and attorney fees under the contract, (3) $500,000 in general damages for pain, suffering, and inconvenience, (4) $500,000 in general damages for emotional distress, and (5) $2,000,000 in punitive damages.

Also on July 3, 2001, Chavez served defendants by mail with a request for entry of default. It is not clear from the record when Chavez filed this request or when the trial court entered default.

On August 13, 2001, the trial court held a default prove-up hearing. Both Chavez and his counsel submitted declarations to the court. Chavez testified at the hearing, and

the court admitted his 22 exhibits into evidence. Neither defendants nor their counsel appeared at the hearing.[1]

The trial court entered judgment in favor of Chavez and awarded him damages in the following amounts: (1) $50,000 in compensatory damages for breach of contract, (2) $500,000 in general damages for pain, suffering and inconvenience, (3) $500,000 in general damages for emotional distress, and (4) $2,000,000 in punitive and exemplary damages for fraud and deceit. The court also awarded Chavez $19,068.90 in interest, $46,935 in attorney fees under the contract, and $1,991.50 in costs and disbursements.

DISCUSSION

Defendants contend the trial court erred when it entered the default judgment against them because they had inadequate notice of the amount of general[2] and punitive damages Chavez sought. Defendants argue Chavez did not serve his statements of damages on them within a "reasonable" time before the trial court entered default.

Under Code of Civil Procedure section 580, subdivision (a), "[t]he relief granted to the plaintiff, if there is no answer, cannot exceed that which he or she shall have demanded in his or her complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115 . . . ."[3] A plaintiff seeking general and punitive damages for personal injury must serve a statement of damages on the defendant in accordance with sections 425.11 and 425.115 "before a default may be taken."[4]

The Code of Civil Procedure does not specify any precise deadline by which a plaintiff must serve the statement of damages before a default may be taken. California

---

[1] Defendants do not argue they had inadequate notice of the hearing.

[2] In their appellate brief, defendants mistakenly refer to the damages at issue as special damages instead of general damages. It is clear from their brief and the record defendants are complaining about the $1,000,000 in *general* damages the trial court awarded.

[3] All further statutory references are to the Code of Civil Procedure.

[4] Sections 425.11, subdivision (c) and 425.115, subdivision (f).

courts are split on this issue.[5] Some courts have concluded a plaintiff must "defer entry of default until 30 days" after service of the statement of damages under section 425.11.[6] Other courts have determined a plaintiff must serve a statement of damages under section 425.11 within a reasonable period of time prior to entry of default.[7] Although the cases we cite here involve matters in which the defendants never filed answers to the complaint, we see no reason why a different time period should apply to a case like this in which defendants' answers were stricken for violation of court orders relating to discovery. The statutes do not differentiate between these two situations.

Regardless of whether we were to apply the 30-day or the reasonable time period, we would not be able to evaluate defendants' claim of inadequate notice because we do not know what date the trial court entered default. Based on the evidence in the record, Chavez served by mail and filed his statements of damages on July 3, 2001 — the same day he served his request for entry of default. There is no evidence in the record, however, indicating what date Chavez filed the request for entry of default or what date the trial court entered default. The trial court held the default prove-up hearing and entered the default judgment on August 13, 2001.

This court sent two letters to the parties, requesting defendants submit a file-stamped copy of the request for entry of default indicating the date the trial court clerk entered default in this matter. In response to the first letter, defendants informed the court they were "unable to locate" the requested document. They submitted instead a document they described as "a copy of the Los Angeles Superior Court Civil Case Summary for the underlying case." We presume defendants obtained this document from the Los Angeles Superior Court's website.

---

[5] Weil & Brown, California Practice Guide: Civil Procedure Before Trial (The Rutter Group 2002) paragraphs 5:97-5:99, page 5-27.

[6] See, e.g., *Twine v. Compton Supermarket* (1986) 179 Cal.App.3d 514, 517.

[7] See, e.g., *California Novelties, Inc. v. Sokoloff* (1992) 6 Cal.App.4th 936, 945 (serving statement of damages by mail 17 days prior to entry of default was reasonable).

In the second letter, this court informed defendants the document they submitted is not competent evidence and we may not rely on it in deciding this appeal. We suggested defendants obtain a copy of the requested document from the Los Angeles Superior Court. We informed defendants in the event this court did not receive a copy of the requested document, we would have no alternative but to affirm the judgment on the ground defendants had produced an inadequate record on appeal. Defendants still have not submitted a file-stamped copy of the request for entry of default indicating the date the trial court clerk entered default in this matter.

On appeal, we presume a judgment of the trial court is correct. "'All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.'"[8] To prevail on appeal, a party must provide an adequate appellate record demonstrating error.[9] "[I]f the particular form of record appears to show *any* need for *speculation or inference* in determining whether error occurred, the record is *inadequate*."[10]

Based on the record before us, we cannot determine whether Chavez served his statements of damages on defendants within an appropriate time before the trial court entered default. Because defendants failed to provide an adequate record on appeal, we must presume the judgment is proper and affirm.[11]

---

[8] *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.

[9] *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296.

[10] Eisenberg et al., California Practice Guide: Civil Appeals and Writs (The Rutter Group 2002) paragraph 4:43, page 4-9.

[11] See *Estrada v. Ramirez* (1999) 71 Cal.App.4th 618, 620, footnote 1.

DISPOSITION

The judgment is affirmed. Respondent is entitled to recover his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

JOHNSON, J.

We concur:

PERLUSS, P.J.

MUNOZ (AURELIO), J.*

---

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.